cannot, in the absence of allegation of bad faith, interfere with the exercise of that discretion. *Carltons Ltd. v. Commissioners of Works & Ors.*[2] and *Attorney-General v. A. W. Gamage Ltd.*[3]. In my judgment paragraph (m) of sub-section (1) of section 13 of the Control of Rent Ordinance, 1948, confers a discretion on the Rent Assessment Board both as regards the intention of the owner of premises to demolish the premises for the purpose of rebuilding and as its being in the public interest that he should be permitted to do so. There was no allegation of bad faith in this case.

I therefore, gave judgment for the plaintiffs with costs and ordered that vacant possession of the premises be delivered on or before the 15th May, 1952.

Judgment for the plaintiffs.

Solicitors for the plaintiffs: *Shearn, Delamore & Co.*
Solicitor for the defendant: *Ong Huck Lim.*

P. N. MOHAMED IBRAHIM v. YAP CHIN HOCK & ANOR.

[A. C. J. (Wilson, J.) January 29, 1954]

[K. L. — Civil Appeal No. 958 of 1953]

Practice and procedure — Subordinate Courts Rules, 1950, O.10, r. 3 — Failure to file defence within time.

Landlord and tenant — Ejectment — Certificate given in terms of s. 13(1)(m) of the Control of Rent Ordinance, 1948 — Whether Court hearing Magistrate's Appeal bound to follow decision (on a similar certificate issued) given by a High Court with original jurisdiction.

Summons was served on the appellant (defendant) on October 10, 1953 for hearing on October 16, 1953. The appellant did not file any defence but appeared in person on October 16, and admitted the facts set out in the plaint. The learned President then proceeded to give judgment. The appellant appealed on the ground that the President should have extended time for filing the defence by virtue of O. 8, r. 6.

It was further argued that although the Rent Assessment Board had issued a Certificate in terms of section 13(1)(m) of the Control of Rent Ordinance, 1948, to the effect that the respondents (plaintiffs) were entitled to demolish the premises occupied by the appellant in the public interest, it was necessary for the learned President himself to hear evidence on this point and come to his own conclusion as to whether it was in the public interest or not.

Held: (1) even if O. 8, r. 6 had been complied with by the respondents, the appellant had been in default in filing a defence under O. 10, r. 3 and therefore there was no merit in the contention that the learned President should have extended time for filing of the defence; (2) the Court was bound by the decision given in **Low Yeo Foong & Ors. v. Chop Thong Cheong**[1] where it was held that the Court could not interfere with the Certificate of the Rent Assessment Board which was final and binding, as the decision given there was a decision of the same Court or of a Court of co-ordinate jurisdiction, and therefore the appellant must vacate the premises.

[Editorial Note: Decisions of co-ordinate jurisdiction — Lord Goddard, C.J. in **Huddersfield Police Authority v. Watson** (1947) 2 All E.R. 193 at p. 196 said: ". . . the modern practice is that a Judge of first instance, although, as a matter of judicial comity, he would usually follow the decision of another Judge of first instance unless he was convinced that that judgment was wrong, certainly is not bound to follow the decision of a Judge of equal jurisdiction. A Judge of first instance is only bound to follow the decision of the Court of Appeal and the House of Lords and, it may be also, the Divisional Court." His Lordship was considering certain dicta, in which Judges have apparently said that a Court is bound by decisions of a Court of co-ordinate jurisdiction if they are subject to appeal, but not otherwise. In a recent case (**In re House Property & Investment Co. Ltd.** (1953) 3 W.L.R. 1037 at p. 1058) Roxburgh, J. answering the question "What is the duty of a Judge when he is confronted with a series of decisions which are difficult to reconcile?", said: ". . . if there is a decision which cannot be distinguished from the case before him, even if it is a decision of a Judge of the first instance, a fortiori, of course, if it is a decision of the Court of Appeal or House of Lords, he ought to apply it — expressing maybe his doubts whether it is still good law, but leaving a superior tribunal to overrule it." **In Re Chop Nam Chiang Long** (1927) S.S.L.R. 28, Murison, C.J. referred to an unreported judgment of Barrett-Learned, J. in **Re Chop Ghee Lee** (Bankruptcy No. 362 of 1923) which was a case similar to the one before him. In following the decision of Barrett-Learned, J. the learned Chief Justice said: "As the decision of Barrett-Learned, J. is a decision of the same Court, I follow by courtesy, but not by conviction, the terms of his judgment and reluctantly dismiss the motion . . . . ."].

Cases referred to:—

(1) *Low Yeo Foong & Ors. v. Chop Thong Cheong* (1954) M.L.J. 126.

(2) *Young v. Bristol Aeroplane Co. Ltd.* (1944) 2 All E.R. 293.

MAGISTRATE'S APPEAL, Action for Ejectment.

R. Ramani and *Chung Shiu Tett* for the appellant (defendant).

C. O. G. Gould for the respondents (plaintiffs).

Cur. Adv. Vult.

Wilson, J.: — This was an action for ejectment. In the Memorandum of Appeal it is stated that the summons was served on the defendant on the 10th day of October, 1952 for hearing on the 16th day of October. Presumably, the date of service was the 10th October, 1953. Order 8 Rule 6 provides that "a summons commencing an action shall be served not less than seven clear days before the return date, unless the Court shall otherwise order." The learned President did not make any order for an earlier trial.

Order 10 Rule 3 provides that "if a defendant desires to defend the whole or any part of the claim he shall, not less than two days before the return date of the summons, or within such further time as the Court may allow, file and caused to be served on each plaintiff a defence." When the case came on for trial on the 16th October, 1953, the defendant had not filed any defence but appeared in person. He was asked by the learned President if he admitted the facts set

out in the plaint. The defendant said that he did and he was then asked: "Is that why you have not filed a statement of defence?" and he replied, "Yes". The learned President then proceeded to give judgment. It is said that he could not do so because, in the first place, the summons had been served less than seven clear days before the return date. I think it is obvious that it is open to a defendant to waive the provisions of Order 8 Rule 6 if he wishes to do so. It is probable that he was unaware of the provisions at all but I think that, having regard to what happened on the 16th day of October, the defendant must be held to have agreed to the case being tried on that day. In any case he was, on that date, in default by not having filed the defence because, even if the summons had been served upon him seven clear days before the return date, he would on the return date, if it had been seven days after the date of service, have been in default in filing a defence under Order 10 Rule 3. The object of this Rule is for the benefit of the plaintiff so that he may not be taken by surprise at the last moment.

In all the circumstances, I find no merit in the contention that the learned President should have extended the time for the filing of the defence and postpone the hearing of the case. In his grounds of judgment, the learned President states that no defence having been filed, it was open to the Court to give judgment in default under Order 10 Rule 7. I do not think that this rule gave the learned President any such authority. All that Rule 7 says is that where a party is in default in filing a defence "the Court may direct that such party be precluded from defending the claim." I think, however, there is an inherent power in the Court, where a defendant says he does not wish to file a defence and admits the allegations in the plaint to proceed with the hearing of the case forthwith. There could be no possible reason for adjourning the case or allowing the defendant a further time in which to file a defence.

It has also been argued that, even though the defendant admitted the statements contained in the plaint, it was still incumbent upon the plaintiffs to prove those statements. With that proposition I am unable to agree. I do not think it is necessary for a plaintiff to give evidence of any allegation in a statement of claim if that allegation has been admitted by the defendant.

It has further been argued that, although it was admitted that the Rent Assessment Board had issued a certificate under section 13(1)(m) of the Rent Control Ordinance to the effect that the plaintiffs intended to demolish the premises occupied by the defendant for the purpose of re-building and that in the opinion of the Board it was in the public interest they should be permitted to do so, it was necessary for the learned President himself to hear evidence on this point and come to his own conclusion as to whether it was in the public interest or not. In this connection my attention was very properly drawn by Mr. Ramani to a decision of Mr. Justice Buhagiar in Kuala Lumpur Civil Suit No. 204 of 1951[1] in which the learned Judge decided that a similar certificate given in another case was final and binding and that the Court could not interfere with it. It has been suggested that that decision is not binding on me and I have been asked to give a decision in contrary terms. I wish to draw attention to the case of *Young v. Bristol Aeroplane Co., Ltd.*[2]. In that case the Master of the Rolls states as follows:—

> "On a careful examination of the whole matter we have come to the clear conclusion that this court is bound to follow previous decisions of its own as well as those of courts of co-ordinate jurisdiction. The only exceptions to this rule (two of them apparent only) are those already mentioned which for convenience we here summarise: (i) The court is entitled and bound to decide which of two conflicting decisions of its own it will follow. (ii) The court is bound to refuse to follow a decision of its own which, though not expressly overruled, cannot in its opinion stand with a decision of the House of Lords. (iii) The court is not bound to follow a decision of its own if it is satisfied that the decision was given per incuriam."

I am, of course, aware that this was a decision which specifically dealt with the powers of the Court of Appeal in England but I am unable to discover that any different principle of law applies in this case. There must, of course, be conflicting decisions, and indeed in this case I should have been unaware of the judgment of Mr. Justice Buhagiar, which was not reported, if my attention had not been drawn to it. If it is material I would draw attention to the fact that in this case I am sitting as a Court of Appeal and that the decision of Mr. Justice Buhagiar given in a Selangor case is either a decision of the same Court or of a Court of co-ordinate jurisdiction.

I have come to the conclusion that I am bound by the decision of Mr. Justice Buhagiar and I have not considered whether or not I would myself come to the same conclusion. For these reasons I must dismiss this appeal with costs.

I would draw attention to the fact that whereas in the Order of the Registrar of the Sessions Court it is stated that the judgment of the Court was given on the 16th October, 1953, the true copy signed by the President shows that the case was heard on the 27th October, 1953.

Appeal dismissed.

Solicitors for the appellant: *Braddell & Ramani.*
Solicitors for the respondents: *Lovelace & Hastings.*